

Exhibit A

**THE PUBLIC INTEREST LEGAL
FOUNDATION,**

Plaintiff,

V.

**ROBERT TORRES, in his official
Capacity as Acting Secretary of the
Commonwealth of Pennsylvania, and
JONATHAN M. MARKS, in his official
Capacity as the Commissioner of the
Bureau of Commissions, Elections and
Legislation,**

Defendants.

[illegible]

NO. 1:18-CV-00463

CHIEF JUDGE CONNER

ELECTRONICALLY FILED

**DEFENDANTS' SUR REPLY IN FURTHER SUPPORT
OF MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)**

The Sur Reply filed by The Public Interest Legal Foundation (“PILF”) (ECF No. 20) does nothing to salvage PILF’s defective Complaint. The letter sent to persons potentially affected by the Motor Voter electronic system error and the communication from the Department of State concerning the error do not establish or confirm a program or activity subject to public inspection under the National Voter Registration Act (“NVRA”), 52 U.S.C. § 20507(i). Further, contrary to

PILF's assertion, Defendants' Reply Brief (ECF No. 17) did not misstate the facts or the law.

As explained in both Defendants' opening and reply briefs (ECF Nos. 12, 17), the NVRA only requires states to implement programs to remove registrants who have died or moved away. Pennsylvania's list maintenance programs are aimed at removing registrants for these reasons and make no provision for investigation or removal of suspected non-citizens. *See* 25 Pa. C.S.A. § 1901 (Removal of electors). The April 27, 2018 letter to 7702 registered voters does not relate to death or change of residence and is not part of Pennsylvania's list maintenance programs. The letter does not "identify and remove noncitizens" as PILF claims or announce or effect any cancellations. (*See* Sur Reply at 2; *see also id.* at 4, 5.) Rather, the letter affirms voter eligibility requirements and advises persons potentially affected by the electronic system failure that they may confirm their own eligibility or contact their county election office if they have questions. The accompanying statement from the Department of State makes clear that no voter registrations were canceled or will be canceled as a result of the letter. To the contrary, the statement explains that "there is more analysis to be done" and that "additional steps" will be taken at a later date to ensure that individuals "affirm their eligibility or request cancellation. . . ." (*See* Pl.'s Sur Reply Br. Ex.

A.) PILF's characterization of the letter as confirmation of a process for removal of voters is not accurate.¹

The letter and statement merely repeat what the Department has consistently represented: the Department is conducting a privileged analysis of the electronic system error unrelated to regular list maintenance required by the NVRA or 25 Pa. C.S.A. § 1901. There are no records related to the privileged analysis which are subject to public disclosure under the NVRA. PILF fails to state a claim.

Respectfully submitted,

/s/ Daniel T. Brier

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Dated: May 21, 2018

¹ It bears repeating that records relating to voters who self-cancel are not subject to inspection under the NVRA or Pennsylvania law. PILF has no right to the records specified in note 2 of its Sur Reply.

CERTIFICATE OF SERVICE

I, Daniel T. Brier, hereby certify that a true and correct copy of the foregoing Sur Reply Memorandum in Further Support of Motion To Dismiss was served upon the following counsel of record via the Court's ECF system on this 21st day of May, 2018:

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